

## **Subcommittee on Duties of Elected Officials-- Recommendations**

Proposed Charter Language on Establishing Salaries, Human Resources/Personnel Department, and Charter sections 117, 57 and 58, Prepared for Submission to the Full Committee by James Ingram

Per Subcommittee request, staff has prepared this report for forwarding to the San Diego Charter Review Committee.

At the Subcommittee's request, the staff worked with representatives from the City Attorney's Office to propose draft language for the City Charter. These representatives have helped to ensure that the form of the language is acceptable, although they are not authorized to endorse its content.

The Subcommittee made three recommendations for proposed Charter language, covering the issues of establishing salaries, Human Resources/Personnel Department, and Charter sections 117, 57 and 58. The Subcommittee adopted each of these recommendations by a separate motion. The Subcommittee unanimously approved the recommendation on establishing salaries (August 31, 2007). The Subcommittee voted 3-2 to approve the recommendation on Human Resources/Personnel Department (August 10, 2007). The Subcommittee unanimously approved the recommendation on Charter sections 117, 57 and 58 (July 27, 2007).

### **ESTABLISHING SALARIES**

#### ***Current Language***

##### **"Section 12.1: Councilmanic Salaries**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election."

##### **"Section 24: Mayor**

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The rate of pay of the Mayor shall be \$12,000.00 per year.

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##### **"Section 24.1: Mayor's Salary**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon

the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election."

**"Section 40: City Attorney**

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The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year."

**"Section 41.1: Salary Setting Commission**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community."

***Proposed Language Recommended by Subcommittee***

**Section 12.1: Salaries of Elected Officials**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt those salaries by ordinance. The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

**Section 40: City Attorney**

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The salary of the City Attorney shall be fixed as provided in section 12.1 and set forth in the annual appropriation ordinance, except that the salary of the City Attorney may not be decreased during a term of office, and in no event shall said salary be less than \$15,000.00 per year.

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**Section 41.1: Salary Setting Commission**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at

least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification of salaries for all elected City officials as provided in section 12.1 of this Charter. The City Manager shall provide from existing resources the staff and services necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

## ***Ballot Language to Adopt Proposed Language***

### **Section 12.1: ~~Councilmanic~~ Salaries of Elected Officials**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of ~~members of the Council~~ elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~ shall adopt ~~those~~ salaries by ordinance ~~as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.~~ The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

### **Section 24: Mayor**

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~~The rate of pay of the Mayor shall be \$12,000.00 per year.~~

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### **Section 24.1: Mayor's Salary**

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's~~

~~salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

#### **Section 40: City Attorney**

###

The salary of the City Attorney shall be fixed as provided in section 12.1~~by the Council~~ and set forth in the annual appropriation ordinance, ~~provided except~~ that the salary of the City Attorney may not be decreased during a term of office, ~~but~~ and in no event shall said salary be less than \$15,000.00 per year.

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#### **Section 41.1: Salary Setting Commission**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members.~~The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the establishment and modification enactment of an ordinance establishing salaries for all elected City officials the Mayor and Council as provided in section 12.1 of by this Charter. The City Manager shall provide from existing resources the staff and services Council shall provide the funds necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:~~

(1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.

(2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.

(3) The benefits package accompanying the City office.

(4) Comparable data including the Consumer Price index and rates of inflation.

(5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates. — The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.

## ***Staff Addendum***

As is indicated in the language, this would exempt the salary setting process from the non-delegation provisions of the Charter contained in section 11.1. However, the language would retain the right of the public to use the referendum if the salary increases of the Salary Setting Commission were objectionable. There was some debate as to whether to explicitly include the indices that the Salary Setting Commission is to consider in establishing salaries, but the Committee concluded that since there is a delegation of power to this citizen commission, it was appropriate to offer guidance. The Salary Setting Commission presently considers these indices in making its recommendations for Mayor and Council salaries.

## **HUMAN RESOURCES/PERSONNEL DEPARTMENT**

### ***Current Language***

#### **"Section 37: Personnel Director**

The Personnel Director shall be appointed by the Civil Service Commission and shall have all powers and perform all duties prescribed for such Personnel Director in Section 116 of Article VIII. In addition thereto he shall exercise general supervision over the employment policy of the City, subject to the Civil Service provisions of this Charter and the directions of the Civil Service Commission. He shall keep a record of the personnel conditions in the City service and shall, upon the request of the Manager or of the Civil Service Commission, or on his own initiative, investigate problems relating to the securing of a better class of applicants for positions, and to the maintenance of efficiency among City Employees, and to any and all other matters relating to this department as may properly come before him.

The Personnel Director, with the approval of the Civil Service Commission and the Manager shall have jurisdiction to investigate working conditions of City service as they affect the health, welfare, efficiency, service and esprit de corps of the employees. He shall be accessible to any employee who shall desire to complain of any matter incident to his employment."

#### **"Section 116: Personnel Director**

The Civil Service Commission shall appoint a Personnel Director who shall serve as Secretary of the Commission. He shall act as Chief Examiner and superintend the examinations, subject to the direction of the Commission. He shall perform such other duties as are prescribed by this Charter, by ordinance, or by the Commission."

### ***Proposed Language Recommended by Subcommittee***

#### **Section 265: The Mayor**

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(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

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(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

(17) Sole authority to dismiss the Personnel Director without recourse.

## ***Ballot Language to Adopt Proposed Language***

### **Section 265: The Mayor**

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(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

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(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

(17) Sole authority to dismiss the Personnel Director without recourse.

### ***Staff Addendum***

The Subcommittee voted 3-2 to forward this recommendation on August 10, 2007. One Subcommittee member did not favor changing the current system. Another Subcommittee member favored giving the Personnel Director the right to appeal termination to the Council, following the removal provisions established by the Charter for the Fire Chief and the Police Chief.

## **CHARTER SECTIONS 117, 57 AND 58**

### ***Current Language***

#### **"Section 117: Unclassified and Classified Services**

(c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon

recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor."

### ***Proposed Language Recommended by Subcommittee***

[The Subcommittee recommended adding subsection (d) to modify Section 117(c), as follows:]

(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.

### ***Ballot Language to Adopt Proposed Language***

(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.

### ***Staff Addendum***

This item is termed an amendment to Charter sections 117, 57 and 58, yet only section 117 is directly modified. Charter sections 57 and 58 are also cited because they provide for the management of the Fire and Police departments. Apparently, when it is read in conjunction with Charter sections 57 and 58, Charter section 117(c) could be interpreted to allow the contracting out of the services of the City's public safety employees. This was not the intent of the voters when they ratified Prop C in November 2004. The Charter change recommended here would fix this problem and ensure that the Charter reflects the voters' intent. The recommendation only applies to individuals who are part of the Safety Retirement System, and therefore does not affect the City's partnership with Rural/Metro to create San Diego Medical Services Enterprise (a public/private L.L.C. through which the City delivers emergency medical services).